

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 01-455-A
	)	
ZACARIAS MOUSSAOUI	)	
a/k/a "Shaqil,"	)	
a/k/a "Abu Khalid	)	
al Sahrawi,"	)	
	)	
Defendant.	)	

ORDER

In their Motion for Access to Certain Portions of the Record ("Motion for Access") (Docket #811), the media Intervenor argue that the United States has improperly relied on the Classified Information Procedures Act ("CIPA"), 18 U.S.C. App. 3, as the justification for maintaining completely under seal the filings to which the Intervenor seek access.<sup>1</sup> The Court finds merit in the Intervenor's argument.

In continuing to evaluate the Motion for Access and the United States' Response and Supplemental Responses thereto, the Court has determined that redaction, if possible, rather than the complete sealing of filings which contain classified information, appropriately balances the United States' national security concerns against the public's right to access the records in this prosecution. See In re Washington Post Co., 807 F.2d 383, 391-93 (4<sup>th</sup> Cir. 1986); In re Knight Publ'g Co., 743 F.2d 231, 233-35

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<sup>1</sup> Intervenor do not seek access to classified information. (Intervenor's Reply at 1, 5).

(4<sup>th</sup> Cir. 1984); see also United States v. Moussaoui, No. 03-4162 (4<sup>th</sup> Cir. May 13, 2003)(order addressing media Intervenor's Motion for Access to Certain Portions of the Record and Oral Argument). Accordingly, it is hereby

ORDERED that the United States review the pleadings, orders, opinions and transcripts docketed as #s 488, 489, 555, 572, 574, 580, 585,\*<sup>2</sup> 589, 596, 601, 608, 616, 617, 628, 629, 635, 636, 637, 638, 639, 640, 645, 652, 661, 665, 666, 681, 683, 684, 688,\* 695, 696, 698, 700, 701,\* 702, 710, 711, 713, 715,\* 717, 718, 719, 722, 724,\*<sup>3</sup> 725, 728, 730, 731, 732, 734, 735, 743, 744, 755, 758, 763, 769, 783, 784, 785, 787, 789, 799, 843, 875, 886, 897, 903, 918 and 926 and advise the Court by Friday, May 30, 2003 of its position regarding whether these materials should be maintained entirely under seal,<sup>4</sup> or placed in the public record with or without redactions to exclude national security information; and it is further

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<sup>2</sup> The documents marked with an asterisk (\*) have been filed with the Clerk of Court as sealed attachments to the United States' Supplemental Responses to the Intervenor's Motion for Access. In light of this ruling, the Government must offer specific, legitimate justifications for any redaction beyond that which is necessary to accommodate its national security concerns. Merely stating that the document "refers to" or "describes" other sealed matters, (Second Supplemental Response at 1), is insufficient.

<sup>3</sup> A heavily redacted version of this pleading was unsealed pursuant to the Court's Order of May 6, 2003.

<sup>4</sup> As to each document that the Government requests be maintained under total seal, the United States must provide the Court with a specific, legitimate justification.

ORDERED that the United States review the defendant's pro se filings docketed as #s 592, 595, 600, 611,\*\* 615,\*\* 643,\*\* 644,\*\* 658, 662,\*\* 663,\*\* 690,\*\* 709,\*\* 723,\*\* 727,\*\* 729,\*\* 733, 872, 873, 876, 877, 883, 884, 888, 896, 906, 907, 909, 910, 911, 912, 913, 914, 919 and 928, and advise the Court by Friday, May 30, 2003 of its position regarding whether they can be unsealed with minimal redactions to exclude national security information to which the defendant has been given limited access, or to accommodate the Government's concern that the defendant may be using his pleadings to communicate with the outside world in violation of the Special Administrative Measures governing the conditions of his confinement.<sup>5</sup>

Because there is no public right of pretrial access to ex parte submissions which may reveal litigation strategy, see United States v. McVeigh, 119 F.3d 806, 814 (10<sup>th</sup> Cir. 1997); United States v. Tomison, 969 F. Supp. 587, 595 (E.D. Ca. 1997), it is hereby

ORDERED that pleadings and orders docketed as #s 607, 612, 630, 633, 653, 668, 677, 678, 682, 685, 686, 687, 689, 691, 693,

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<sup>5</sup> At the request of the United States, the pro se filings docketed with numbers marked with double asterisks (\*\*) were placed entirely under seal by Orders dated October 29, 31, November 15, December 17, 2002, January 13 and February 26, 2003. In light of this ruling, the United States must reconsider its original positions, and either offer specific, legitimate justifications for maintaining these filings under total seal, or propose reasonable redactions to them.

760, 768, 795, 800, 802, 921 and 922 shall remain under total seal.

Because the public does not have a right of access to either the Government's ex parte requests made pursuant to Sections 4 and 6 of CIPA, classified orders issued in response thereto, or defense designations pursuant to Section 5 of CIPA, it is hereby

ORDERED that pleadings, orders and other filings docketed as #s 632, 667, 674, 706, 720, 721, 736, 738, 742, 778, 782, 842, 849, 887, 894, 900, 901, 902, 904, 905 and 926 shall remain under seal in their entirety.

The Clerk is directed to forward copies of this Order to the defendant, pro se; counsel for the United States; standby defense counsel; the Court Security Officer; and counsel for the Intervenor.

Entered this 16<sup>th</sup> day of May, 2003.

/s/

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Leonie M. Brinkema  
United States District Judge

Alexandria, Virginia